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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1381.

J. W. ALLEN, COMPTROLLER OF THE STATE OF TENNESSEE, APPELLANT,

vs.

PULLMAN'S PALACE CAR COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 11, 1890.

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INDEX.

	Original.	Print.
Caption	1	1
Summons and return	1	1
Bond for costs	1	1
Bill of complaint	2	1
Exhibit—Agreement between The Louisville and Nashville Railroad Co. and Pullman's Palace Car Co.	11	7
Plea	18	13
Answer	20	14
Replication	23	16
Consent as to filing replication	23	16
Stipulation as to substitution of defendant, &c.	24	17
Order for substitution of defendant, &c.	24	17
Evidence for complainant	25	17
Deposition of Richmond Dean	25	17
J. F. Bird	29	20
Exhibit A—Notice to take depositions	35	24
B—Agreement between The Nashville and Chattanooga Railroad Co. and The Pullman Southern Car Co., April 11, 1872	35	24
Amendment of foregoing agreement	41	28
Letter of James Martin to T. H. Wickes, April 23, 1887	44	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 13, 1890.

	Original.	Print.
Stipulation as to hearing two cases together and as to use of proofs	44	30
Subpœna to witnesses Kellogg and Craik	44	30
Evidence for defendant	45	31
Deposition of Hewitt Craik	45	31
Commission to take depositions	46	32
Deposition of J. W. Thomas	47	33
W. L. Danley	49	35
W. W. Knox	51	36
M. J. C. Wrenne	53	37
Final decree	59	41
Order allowing appeal	60	41
Bond on appeal	60	41
Clerk's certificate	61	42

1 The Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
P. P. PICKARD, Comptroller of the State of Tennessee. } No. 2777.

On the 25th day of May, 1888, the following summons was issued:

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon P. P. Pickard, comptroller of the State of Tennessee, a citizen of said State and a resident in the middle district thereof, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-room at Nashville, in said State, on the third Monday in October next, then and there to answer the bill of complaint of Pullman's Palace Car Company, a corporation organized under — by virtue of the laws of the State of Illinois, having its principal office in Chicago, in said State, and a citizen of said State, in an action by a bill in equity, to his damage fifteen thousand dollars, and praying also for writ of injunction.

Herein fail not, and have you then and there this writ.

Witness the Hon. Samuel F. Miller, Chief Justice of the Supreme Court of the United States, this the 25th day of May, 1888, and of the Independence of the United States the one hundred and twelfth year.

H. M. DOAK, *Clerk.*

MEMORANDUM.—The defendant is required to enter his appearance in the office of the clerk of this court on or before the 2nd day of July, 1888, next, and plead, answer, or demur, or the bill will be taken for confessed and set for hearing *ex parte.*

H. M. DOAK, *Clerk.*

Endorsed: Executed May 28th, 1888, on P. P. Pickard, and leaving a copy of the bill with his attorney, J. M. Head, at his request. Ed. R. Pennebaker, dep. marshal.

The following bond for costs was executed and filed:

2 Know all men by these presents that we, William Burry and the Pullman's Palace Car Company, are held and firmly bound unto P. P. Pickard, as comptroller, etc., in the penal sum of three hundred dollars; to the payment of which we bind ourselves and each of us and each and every of our several heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Witness our hands on this the 24th day of May, 1888.

The condition of this bond is such that the said Pullman's Palace

Car Company has commenced suit against P. P. Pickard, comptroller, etc., for an injunction, etc.:

Now, if the said complainant shall prosecute said suit with effect or, on failure thereof, pay and satisfy all costs that may be adjudged against said plaintiff in said cause; or, on failure of said defendant, if convicted, to pay and satisfy the same, if the said complainant shall pay the same, then this bond to be void; otherwise to remain of full force and effect.

WM. BURRY.

The following bill was filed:

Pullman's Palace Car Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a citizen thereof, brings this its bill of complaint against P. P. Pickard, comptroller general of the State of Tennessee, a citizen of the State of Tennessee and residing in the middle district thereof.

And thereupon your orator complains and says that your orator's domicile and place of business and its principal office is in the county of Cook and State of Illinois, where it is engaged in manufacturing and owning sleeping and drawing-room cars and, by contract with railroad companies throughout the United States of America, Canada, and Mexico, furnishing the same for use in operating long, continuous, through connecting lines of railroads extending interstate and between foreign nations; that it retains the possession of such cars and receives compensation from persons travelling therein for the use of seats or sleeping berths therein.

That it has no domicile, office, or principal place of business in the State of Tennessee and is not subject to the jurisdiction of
3 Tennessee for the purposes of taxation.

That there are certain railroad companies operating and owning long, continuous, through, connecting lines of railroads extending from other States and Territories of the United States into or into and through the State of Tennessee, each of said lines of railroads also connecting with other railroad lines running through many of the States and Territories of the United States.

That each of said railroad companies is engaged in the business of interstate commerce, and cars running on their lines of railroad pass beyond their lines upon other railroads and so into and through many other States and Territories of the United States; that for the accommodation, convenience, and comfort of railroad passengers travelling over the lines of said railroad companies for long distances, and especially at night, it was and is necessary that there should be provided and carried upon said railroad lines sleeping and drawing-room cars for the use of said passengers.

That certain of said railroad companies did therefore, each of them, prior to the first day of January, 1887, enter into certain separate contracts with your orator for the running upon their respective lines of road of sleeping and drawing-room cars by your orator, all of which contracts or continuations or renewals thereof are still in force.

That in and by each of said contracts between your orator and

said railroad companies your orator agreed to furnish for use in operating the lines of said railroad companies sleeping and drawing-room cars sufficient to meet the requirements of travel on and over such lines of railroad.

That in and by the terms of each of such contracts your orator reserved the right to retain the possession of and to manage and control the inside of such sleeping and drawing-room cars, and to furnish to railroad passengers the use or accommodation of seats or sleeping berths in such cars, to collect compensation therefor,
4 and to keep the carpets and upholstery, bedding, and all the inside arrangements of such cars in good repair, except repairs and renewals made necessary by accident or casualty, and to furnish one or more employés upon each of such cars, whose duties it shall be to collect fares for the extra accommodation afforded in such sleeping and drawing-room cars from the passengers therein, and to provide for the comfort of such passengers generally, and in and by each of the said contracts said railroad companies agreed to haul such sleeping and drawing-room cars on their respective lines of road and at their own expense to furnish fuel for such cars; to light, wash, and clean the same; to permit your orator to collect its usual charges for the extra accommodations afforded by such sleeping and drawing-room cars, and to place tickets for such accommodations in the hands of said railroad companies' agents at their railroad ticket offices for sale by them without charge to your orator, the proceeds of such sales, however, to be at the risk and inure wholly to the benefit of your orator, and that your orator should have possession of such cars; all of which things, together with other provisions of said contracts not material to this cause, will more fully appear by reference to said original contracts, now in the possession of your orator and ready to be produced as this court shall direct.

And your orator attaches to this bill as Exhibit "A" a copy of one of such contracts and avers that all the other of said contracts are in substance similar thereto.

Your orator further shows that it has never had any branch office of any kind in the State of Tennessee, unless the fact that it places tickets for sale with the agents of said railroad companies constitutes such agents branch offices or establishments of your orator; that your orator has never had any other officers, agents, or employés in Tennessee except conductors and porters, which it furnishes with its cars under said contracts; that the sleeping cars operated by your orator as aforesaid comprise all the property
5 owned by your orator in Tennessee; that the cars furnished by your orator as aforesaid and operated upon said lines of railroad under said contracts are all used for transporting passengers from other States into or across the State of Tennessee or from places in the State of Tennessee to places in other States; that some of said cars also transport passengers from points in Tennessee to other points in that State whenever they properly apply for such transportation, but the number of such passengers is very small com-

pared with the number of interstate passengers transported in such cars.

That the sleeping and drawing-room cars so furnished by your orator and used upon the railroad lines as aforesaid constitute all the sleeping and drawing-room cars owned or operated by your orator in the State of Tennessee, and that all said cars run into, out of, or across the State of Tennessee, making only such stops as the trains to which they are attached make; that in the case of travellers travelling across Tennessee or from points out of it to points in it their sleeping-car tickets are purchased and paid for before they enter Tennessee, and in the case of passengers travelling from points in Tennessee to other points in that State and from points in Tennessee to points in other States their tickets are purchased and paid for in Tennessee; that none of said sleeping cars run upon lines or between points exclusively within the State of Tennessee, but all of said sleeping cars run interstate—that is, from points outside the State of Tennessee into or into and through Tennessee, or from points in Tennessee to points out of Tennessee—and that therefore all of such sleeping cars are occupied and used in interstate commerce and are not taxable by the State of Tennessee.

That your orator owns in whole or in part and operates more than one thousand three hundred (1,300) sleeping cars and drawing-room cars, running into all or nearly all the States and Territories
6 of the United States and into Canada and Mexico; that its headquarters and principal place of business for conducting the operations of all of said cars is in the city of Chicago, county of Cook, State of Illinois; that its principal officers reside there; that its records are there; that its moneys earned all over the United States, Canada, and Mexico are remitted there as soon as possible in the course of business; that no special cars belonging to it are at all times used in the State of Tennessee, but its sleeping and drawing-room cars are constantly changing from road to road to suit the demands and emergencies of business and traffic, and that sleeping cars at one time running in Tennessee are at other times transferred to railroads in other States and Territories of the United States and other sleeping cars belonging to it are used in their places.

That none of such sleeping and drawing-room cars are brought into the State of Tennessee for the purpose of doing a local business therein or for permanent or continuous use therein, but simply for the purpose of interstate commerce, as hereinbefore stated; that such cars do not remain in Tennessee longer than is necessary to pass through it and to be attached to the proper trains, and therefore have no taxable *situs* in the State of Tennessee, but their *situs* for the purpose of taxation is in said county of Cook and State of Illinois, and the business your orator is engaged in is interstate commerce, which cannot be taxed or regulated by the State of Tennessee and on account of which no license fee or tax can be exacted from your orator by said State.

Your orator insists that said sleeping and drawing-room cars were and are engaged only in the business of interstate commerce under the protection of the laws and Constitution of the United States,

which confer upon Congress the power "to regulate commerce with foreign nations and among the several States," and that your orator cannot be taxed on account of the business of operating said
7 sleeping cars as aforesaid, and that all taxes or license fees imposed upon your orator, as hereinafter set out, on account of said cars or on account of the business of operating them, in which your orator is engaged, are illegal and void; that your orator is each year assessed and taxed at its domicile, place of business, and principal office in said county of Cook and State of Illinois upon its tangible property and upon its capital stock, and has been so assessed and taxed for the year A. D. 1887, in said county of Cook, upon its tangible property and its capital stock, its capital stock representing its real and personal, tangible and intangible, property, including its sleeping and drawing-room cars engaged in interstate commerce and including the cars hereinbefore mentioned as operated upon lines of road in the State of Tennessee.

Your orator further shows that by the general-revenue act of the State of Tennessee for 1887 it is provided as follows:

"That the rate of taxation on the following privileges shall be as follows:

"Sleeping-car companies.—Each company doing business in the State, on each car, per annum, $500.00."

That your orator operates into and through the State of Tennessee, in the manner and under the circumstances above set forth, an average of more than thirty sleeping cars.

That the said P. P. Pickard, comptroller general as aforesaid, now claims that there is due from your orator under said tax enactment five hundred dollars ($500) on account of each of said cars, or more than fifteen thousand dollars ($15,000) of taxes, and is now threatening to collect from your orator said taxes and to issue his warrant for the collection thereof, and that said Pickard, in attempting to collect said taxes, threatens to levy said warrant upon the sleeping cars of your orator, and your orator believes and fears that said defendant, unless restrained by this honorable court, will proceed to force the collection of said tax so illegally assessed and claimed by destraining and seizing upon your orator's cars from your
8 orator, and that the proceedings threatened for the collection of said taxes will lead to a multiplicity of suits and will greatly harass your orator.

Your orator further shows that all the sleeping and drawing-room cars aforesaid running in the State of Tennessee are attached to through express trains on the roads of said railroad companies; that prior to their arrival in Tennessee seats and sleeping berths therein have always been sold by your orator to persons travelling from other States into Tennessee; that your orator has at all times contracts with passengers to give them the accommodations furnished by said cars while travelling upon such railroads; that unless your orator pays the taxes so illegally imposed upon it your orator believes and fears that said defendant will, unless restrained therefrom by this court, levy upon and seize, in order to force from your orator said illegal taxes, said sleeping and drawing-room cars while the same

are in actual use and running attached to said express trains; that thereby the travelling public will be discommoded, the carriage of passengers interstate will be prevented, your orator and said railroad companies may become harassed by many suits for damages by passengers for not furnishing them the accommodations they contracted for, the credit and reputation of your orator for furnishing comfortable accommodations, which credit and reputation are of great value to it and have been established by strict attention to business and at great expense and trouble for many years, will be broken up, and the good will of said business greatly impaired, and thereby your orator will suffer great and irreparable injury.

Your orator alleges and charges that said tax enactment of 1887 and 1888, herein set out, is illegal and unconstitutional, because it discriminates in favor of railroad companies, in that it imposes a tax upon the property and business of companies doing business as a sleeping or palace car company only and exempts from such rail-
road tax companies using and operating their own sleeping
9 cars in said State, and is in violation of section 28, article 2, of the constitution of the State of Tennessee, which provides that "all property shall be taxed according to its value, * * * so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

Your orator insists that the State of Tennessee has no jurisdiction of the person, property, or business of your orator for the purposes of taxation, and that your orator, being engaged in the business of inteterstate commerce, is exempted from such regulation and taxation by the Constitution of the United States.

Your orator further shows that the sum of five hundred dollars per car is an unjust, oppressive, and exorbitant tax, even if any such tax could be imposed; that heretofore the State of Tennessee had imposed a tax of fifty dollars per car, expecting to collect that sum on about forty cars passing through the State; that when the courts of the United States held that the State could not tax of license cars engaged in interstate commerce, then the State and its officers, believing that two of your orator's cars were still subject to taxation, raised the rate of taxation to five hundred dollars per car, intending thereby to impose on two cars the amount of tax originally intended to be imposed on many cars, and so to defeat and circumvent the decisions of the courts of the United States.

That your orator offers to do in the premises all that is required of it in equity and good conscience, and to pay to said defendant any and all sums of money that may be found due to them in connection with the matters set forth in this bill as soon as the same may be ascertained by final decrees herein.

To the end, therefore, that defendant may true, full, direct, and perfect answer make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived), and that
as fully and particularly as if the same were here repeated
10 and he specifically interrogated in regard thereto, and that

pending a final hearing of this cause your honors will grant unto your orator a temporary injunction, issuing out of and under the seal of this honorable court, restraining and enjoining the said defendant and his attorneys, agents, and clerks and servants from issuing any warrant for the collection of or proceeding to enforce the collection of the taxes wrongfully and unlawfully imposed upon your orator, as set forth above, and that upon a final hearing herein such injunction may be made perpetual, and that your orator may have such other, further, and different relief in the premises as the nature of this case may require and to your honors may seem meet—

May it please your honors to grant not only the writ of injunction hereinbefore prayed, but also a writ of subpœna, directed to the said P. P. Pickard, as comptroller general as aforesaid, therein and thereto commanding him, on a day and under a certain penalty therein to be limited, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and further to stand to, perform, and abide such further order and decree as to the court shall seem meet; and your orator will ever pray, etc.

PULLMAN'S PALACE CAR COMPANY,
By ELGIN LOCHRANE, *Solicitor.*

WM. BURRY, *Of Counsel.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

A. S. Weinsheimer, being duly sworn, says that he is the secretary of Pullman's Palace Car Company; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same are true as therein stated.

A. S. WEINSHEIMER.

Subscribed and sworn to before me this 19th day of May, 1888.
[NOTARIAL SEAL.] R. C. ALDEN,
Notary Public for Cook County, Illinois.

The foregoing bill is endorsed: "Filed May 24th, 1888. H. M. Doak, clerk."

The following exhibit is attached and was filed with the bill:

This indenture, made this — day of ——, A. D. 188–, between the Louisville and Nashville Railroad Company, hereinafter called the railway company, of the one part, and Pullman's Palace
11 Car Company, hereinafter called the Pullman Company, of the other part, —:

Whereas the Pullman Company is now engaged in the business of manufacturing railway cars known as sleeping cars under certain patents belonging to it, and of hiring the same to railway companies, under contracts for a term of years, to be used and employed on and over the lines of the roads of said railway companies, and receiving

therefor income and revenue by the sale to passengers of seats, berths, and accommodations therein;

And whereas the railway company is desirous of availing itself of the use on and over its lines of road of the cars constructed under said patent now the property of the Pullman Company, and also of connections by means of said cars with other lines of railway whereon said cars are now operated by the Pullman Company: Now, this contract witnesseth:

First. That the Pullman Company, in consideration of the covenants and agreements of the railway company hereinafter mentioned to be by it kept and performed, hereby agrees with the railway company that it will furnish sleeping cars to be used by the railway company for the transportation of passengers sufficient to meet the requirements of travel on and over its line of railway and on and over all lines of railway which it now controls or may hereafter control by ownership, lease, or otherwise; said cars to be satisfactory to and accepted by the general manager or superintendent of the railway company. The cars so furnished shall be in part the cars now operated on the lines of the railway company under its contract with the Pullman Southern Car Company and from time to time such additional cars, properly equipped and acceptable to the railway company, as may be needed to meet the ordinary requirements of travel.

Second. The Pullman Company hereby agrees to furnish, at its own proper cost and expense, one or more employés, as may be needful, upon each of said cars, whose duty shall be to collect
12 fares for the accommodations furnished in said cars, and generally to wait upon passengers therein and provide for their comfort.

Third. The railway company hereby agrees that the general officers of the Pullman Company and the employés named in article second of this agreement shall be entitled to free passage over the lines of the railway company when they are on duty for the Pullman Company.

Fourth. The Pullman Company hereby agrees that the general officers of the railway company shall be entitled to free passes in any of the cars furnished by the Pullman Company under this contract.

Fifth. It is hereby mutually agreed that the said employés of the Pullman Company, named in article second of this contract, shall be governed by and subject to the rules and regulations of the railway company, which are or may be adopted from time to time for the government of its own employés, and in the event of any liability arising against the railway company for personal injury, death, or otherwise of any employé of the Pullman Company it is distinctly understood and agreed that the railway company shall be liable only to the same extent it would be if the person injured was an employé in fact of the railway company, and for all liability in excess thereof shall be indemnified and paid by the Pullman Company.

Sixth. In consideration of the use of the aforesaid cars the rail-

way company hereby agrees to haul the same on its own line of road and on all roads which it now controls or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains in which it may by virtue of contracts or running arrangements with other roads have the right to use said cars, in such manner as shall in the judgment of the general manager or general superintendent of said railway company be best adapted to accommodate passengers upon said railways; and the railway company shall, at its own expense, furnish and apply the necessary lubricating material, provide ice, fuel, and material for lights, and will wash and clean
12 said cars, and, as often as is necessary, will renew and replace links and pins, bell cord and couplings, and couplings for air-brake hose without charge to the Pullman Company.

Seventh. The Pullman Company hereby agrees that it will keep the cars furnished under this contract in good order and repair and will from time to time renew and improve the same, when necessary, at its own expense, and will keep said cars up to the average standard of the best and most approved sleeping cars run on any railroad in the United States which uses an equal number of sleeping cars, excepting repairs and renewals provided for in article sixth of this agreement and such as are made necessary by accident or casualty, it being understood that the railway company shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract, except that the Pullman Company assumes all responsibility for any loss or damage occurring to said cars arising from defective heating apparatus or lights furnished by it.

And the railway company agrees, as a proper compensation for the maintenance of the running gear and bodies of said cars, that it will pay to the Pullman Company the sum of three cents per car per mile for every mile run by said cars upon the road of the railway company or upon the roads of other companies by direction of the officers of the railway company while in service under this contract.

And the railway company hereby agrees at all times, when requested by the Pullman Company, to make promptly such repairs to the cars furnished under this contract as may from time to time become necessary, and to make, without request, such repairs as may be required to insure their safety, rendering bills monthly to the Pullman Company for repairs to cars, and charging for the same only the actual cost of material and labor expended on such repairs, with an addition of ten per cent. to cover general expenses; all settlements and payments for mileage and repairs to be made monthly between said companies.

But it is hereby understood and agreed that whenever the
14 revenue from sales of seats and berths equals an average of seventy-five hundred dollars ($7,500) per car per annum upon the number of cars furnished under this contract, then, while such revenue shall continue, the railway company shall not be required to pay mileage for any cars furnished under this contract, and the Pullman Company shall then bear the expense of all the repairs

and improvements to said cars, except such repairs as are rendered necessary by accident or casualty and such as are provided for in article six of this agreement, which shall be made by the railway company, as hereinbefore mentioned.

Eighth. The railway company agrees to furnish the Pullman Company without charge at convenient points room and convenience for airing and storing bedding.

Ninth. The railway company further agrees that the Pullman Company shall be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be agreed upon mutually by the parties herein as will most favor the renting of accommodations in said cars.

It is mutually understood that no more room in said sleeping cars shall be granted to any person or persons than is usually granted to passengers by other railroads which use their own sleeping cars unless by assent of the general superintendent of the railway company.

The railway company hereby agrees to permit the Pullman Company to place its tickets for seats and berths for sale in such of the railroad ticket offices as may be desired by the Pullman Company, and such service shall be performed by and as a part — the general duties of the ticket agents and without charge to the Pullman Company, proceeds of such sales to be at the risk of the Pullman Company.

Eleventh. The railway company hereby agrees, except as hereinafter provided, that the Pullman Company shall have
15 exclusive right for a term of fifteen years from the date hereof to furnish for the use of the railway company sleeping cars on all its passenger trains over its entire line of railway and on all roads which it controls or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which it may by virtue of contracts or running arrangements with other roads have the right to use such cars, and that it will not contract with any other party to run said class of cars on and over said lines of road during the said period of fifteen years:

Provided, that in all cases in which the railway company may desire to co-operate with other railway companies in forming through lines of sleeping cars the Pullman Company agrees that cars not owned by it may be run over the lines of the railway company when necessary to secure such co-operation; but in all such cases it is agreed that the Pullman Company shall have the right to furnish its *pro rata* of sleeping cars, based upon the mileage of the railway company in said lines; and in all sleeping cars operated in such through lines the Pullman Company shall be entitled to receive all local fares for accommodations therein upon the roads of the railway company and its *pro rata* of through fares, based upon the number of cars furnished by it in said through lines; and it is in like manner agreed that any party holding the right by contract or otherwise to operate sleeping cars upon the road of any particular railroad company forming a portion of the through lines herein-

above referred to shall be entitled to receive all local fares and *pro rata* of through fares for accommodations therein upon the road of such particular railroad company in any of the sleeping cars operated in said through lines.

Twelfth. The Pullman Company, for the consideration of aforesaid, hereby guarantees the railway company against all damages of whatsoever kind which may be by the railway company incurred in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by the Pull-
16 man Company upon the lines of the railway company under this agreement, it being the meaning and intent of this article that the Pullman Company shall secure the railway company against all manner of expenditures which may be incurred by it in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that the Pullman Company will pay off and discharge all judgments obtained at any time against the railway company on account of such infringements.

Thirteenth. It is mutually agreed between the parties hereto that in case either of said parties shall fail to cleanse or repair, according to the conditions of this agreement, any of said cars, then and in that case, after written notice shall have been given to the defaulting party by the other party of the default complained of, if the said defaulting party shall neglect or refuse so to cleanse or repair said cars within a reasonable time after such notice, the other party shall have the right to cleanse and make or cause to be made all necessary repairs and renewals to said cars, and said defaulting party shall pay to the other party the cost of such portion of the cleansing and repairs as said defaulting party is held to be liable for according to the terms of this contract.

Fourteenth. It is mutually agreed between the parties hereto that in case either of said parties shall at any time hereafter fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then and in that case, after written notice shall have been given to the defaulting party hereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep, and fulfill such unfulfilled covenants and conditions of this agreement, within a reasonable time after such notice, the other party shall be at liberty to declare this contract ended and no longer in force.

Fifteenth. It is mutually agreed between the parties hereto that the railway company shall have the option to determine
17 whether it will provide one-half or a less proportion of all the capital required for furnishing the equipment which may be put upon the road of the railway company under this contract, and, upon the payment of the same to the Pullman Company, become a joint owner with the Pullman Company in the said equipment and receive one-half, or a less proportion, as the case may be, of all the gains or profits, and bear the same proportion of all the losses arising from the business of operating the said cars furnished under this contract, the Pullman Company to retain control and

management: Provided, that such option shall be exercised, if at all, and notice thereof communicated to the Pullman Company in writing within ten years from the date hereof.

For the purposes of the option hereinbefore last provided it is hereby mutually agreed that the cars now furnished under this contract, together with such additional cars and equipments as may be subsequently assigned to and accepted by the railway company, shall, when the railway company notifies the Pullman Company of its intention to become part owner of said cars and equipments, be appraised by impartial and competent persons—one to be appointed by the railway company and one by the Pullman Company; they two, in case of disagreement, to appoint a third, and the decision of two to be final, and the value fixed by them shall be taken as the value on which the railway company shall pay the one-half, or a less proportion, as the case may be, in purchasing its interest in the cars and equipments in the event of exercising such option.

And in the event of the railway company exercising its option to become a part owner of said cars and equipments it is hereby mutually agreed, for the purpose of ascertaining the profit to be divided between the Pullman Company and the railway company under this contract, that the operating expenses, which shall be held to include maintenance of said sleeping-car equipments, repairs, supplies, and all expenses of administration and superintend-
18 ence, and all expenses resulting from or in any way connected with the operation of said cars, including judgments or payments for injury to passengers or loss of their property, for which the Pullman Company, as managers, may be responsible, shall be deducted from the gross receipts, and the remainder thereof shall be divided in proportion to ownership in such cars and equipments; settlements to be made monthly.

In witness whereof the railway company hath caused its corporate seal to be attached hereto, attested by its president and secretary, and the Pullman Company hath caused its corporate seal to be attached hereto, in like manner attested by its president and secretary.

Dated the day and year first above written.

THE LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
By C. C. BALDWIN, *President.*

[SEAL.] W. RANNEY, *Sec'y.*

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

[SEAL.] A. S. WEINSHEIMER, *Sec'y.*

Endorsed: Filed May 24th, 1888. H. M. Doak, clerk.

The following plea was filed by the defendant:

The Plea of P. P. Pickard, Comptroller, to the Bill of Complaint of Pullman's Palace Car Company, Filed against Him May 24th, 1888.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill or to so much and such parts of the same as seek to enjoin this defendant from the issuance of his distress warrant for the collection of the taxes due upon the cars owned by it and used and operated wholly within the State of Tennessee, between the cities of Nashville and Memphis, says—

That the matters in controversy have been heretofore adjudicated in this honorable court on the 29th day of December, 1884, in the case of The Pullman Southern Car Company *vs.* James Nolan, comptroller of the treasury of the State of Tennessee, which was a controversy between the same parties and for the same purpose as that contemplated by complainant's bill, wherein it was adjudged "that the said sum of $300.00 paid by said plaintiff as aforesaid under protest to the said Nolan, then comptroller as aforesaid, as a privilege tax to said State for running and using the said two cars between Nashville and Memphis, in said State, was legally assessed, paid, and collected, and that plaintiffs have no right to recover said $300.00 or any part thereof in this action." After the rendition of said decree by this honorable court it was afterwards appealed to the Supreme Court of the United States, where the same was confirmed, the rate of tax therein collected being the amount then due under the then existing laws of the State. Defendant further alleges that said suit, though commenced in the name of The Pullman Southern Car Company against Jas. M. Nolan, the then comptroller of the treasury, was revived against P. P. Pickard, the then and now comptroller of the treasury of the State, and that said suit, though prosecuted in the name of the Pullman Southern Car Company, is the same corporation as the complainant in this cause.

In said cause complainant, having paid the taxes under protest claimed by the State for the years 1878 and 1879 upon all the cars owned and operated by it within and through the State of Tennessee, some thirty-six in all, brought that suit to recover said sum as having been illegally and unconstitutionally collected, and in said suit each and every ground of relief relied upon in complainant's bill in this cause was specifically stated and relied on in said cause before the rendition of the decree hereinbefore stated, which was made upon the final hearing of said cause and upon the merits of the case; all which matters and things this defendant doth aver to be true, and he hereby pleads the said decree in bar to the said plaintiff's bill, and prays the judgment of this honorable court whether he should be compelled to make any other or further answer to said bill; prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

G. W. PICKLE, *Att'y General.*
CHAMPION & HEAD,
Special Counsel.

Endorsed: Filed Feb. 23d, 1889. H. M. Doak, clerk.

The following answer was filed by the defendant:

The Separate Answer of P. P. Pickard, Comptroller, to the Bill of Complaint of the Pullman Palace Car Company Filed Against Him in this Honorable Court May 24th, 1888.

Saving and reserving all exceptions by way of plea, demurrer, or otherwise to the manifold errors and misstatements contained in complainant's bill, for answer thereto, answering so much of said bill as respondent is advised it is material for him to answer, says:

He admits that complainant has its principal office in the county of Cook and State of Illinois, and so far as he knows the general character of business engaged in by it is correctly set forth substantially in its bill of complaint.

Respondent denies, however, that it has no domicile, office, or principal place of business in the State of Tennessee, but insists that it has numerous offices and agents engaged in the transaction of its business in various parts of the State, and especially that it has such office and agency in the city of Nashville and county of Davidson.

Respondent also admits that many of the railroad companies engaged in the operation of running railroads into and across Tennessee and using complainant's sleeping and drawing-room cars are engaged in the transfer of passengers into, through, and across Tennessee; but respondent denies that the entire business transacted by any of said companies is wholly of this character, but, on the contrary, insists that a large portion of the business transacted by said carriers is purely local in its nature—*i. e.*, in the transfer of passengers from one point to another wholly within the State of Tennessee.

21 Respondent admits that each of said railroad companies prior to the first of January, 1887, did enter into separate contracts with complainants for the running upon their respective roads of sleeping and drawing-room cars, and that said contracts, continuations, or renewals of the same are still in force; but respondent denies that the terms of each of such contracts are substantially or accurately set forth in complainant's bill; and respondent further denies that the contract made by complainant with the Louisville & Nashville Railroad Company and filed as Exhibit "A" to its bill is substantially the same contract made by complainant with other railroad companies engaged in the transaction of business in Tennessee, and respondent here calls upon and demands from complainant the production of the contract entered into by it with the Nashville, Chattanooga & St. Louis Railway Company for the running of sleeping and drawing-room cars over the branch of its railway between the cities of Nashville and Memphis, Tennessee.

Respondent further denies that all the cars furnished by it and operated upon said lines of railroad are used in the transporting passengers from other States into or across the State of Tennessee to

places in other States, and alleges that certain cars are domiciled entirely within the State of Tennessee, and, as respondent is informed and charges and believes, it has certain cars that are wholly used within the State, that receive no passengers outside the State for points within or through the State, and receive no passengers within the State for points without, but the whole business done by said cars is exclusively within the limits of the State; that if these cars are not by name domiciled all the time within the State and doing exclusively a State business it is only because they are taken from the State temporarily for repairs or because said cars engaged in transporting passengers between said cities of Nashville and Memphis, Tennessee, are made at other times and upon different occasions to come from without and go beyond the limits of the State merely as a subterfuge and for the purpose of avoiding the liability of complainant for the taxes claimed, the trip or run of these
22 cars being exclusively from the city of Nashville to the city of Memphis, both points being within the State of Tennessee, and at no time is a seat or berth in one of said cars ever held or engaged for a continuous trip from a point without the State of Tennessee to a point within or beyond the State or a seat sold in one of said cars for a continuous trip from a point within the State to a point beyond its limits, but said cars run and ply between said cities of Nashville and Memphis, whether the same, by name or not, are in reality the same and are at all times engaged exclusively in carrying passengers wholly within the State and as such liable to the payment of the tax claimed by said State through its officers.

Respondent further alleges that all other cars owned and operated by complainant under its contracts with the various railroad companies operating in the State of Tennessee are engaged also, as complainant's bill alleges and admits, in the transaction of business wholly within the State of Tennessee, and as such are subject to the payment of the taxes claimed, even though they are at the same time also engaged in the transaction of what is claimed to be interstate commerce.

Respondent again expressly denies each and every allegation contained in complainant's bill which alleges that all of its cars are engaged in the transaction of interstate commerce, and, on the contrary, expressly alleges that all of its cars are engaged in the transfer of passengers from one point to another within the State of Tennessee, and that certain of its cars are exclusively engaged in the transfer of passengers wholly within the State.

Respondent expressly denies that it is necessary or essential for the convenience of the public or the requirements of business that its cars engaged in the transfer of passengers between the city of Nashville and Memphis, in this State, should at any time make a continuous trip to other points beyond or without the State, the regular course of business being, as respondent is informed and charges, that the car which leaves the city of Nashville at
23 night runs directly to the city of Memphis and remains there until the following night, when it is returned to the city of Nashville, and the car which leaves Memphis at the same night runs

to the city of Nashville and remains over until the following night, when it is returned to the city of Memphis; that this constitutes one continuous and complete trip, and that said cars need not and in fact do not go beyond to points beyond said cities except occasionally, and then either for purpose of being repaired or to meet some unusual and pressing emergency; and now, having fully answered, respondent prays to be dismissed with his reasonable costs.

G. W. PICKLE, *Att'y Gen'l.*
CHAMPION & HEAD,
Special Counsel.

Endorsed: Filed Feb'y 23d, 1889. H. M. Doak, clerk.

The following replication was filed:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says—

That it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its bill it has already prayed.

WM. BURRY,
Comp'n't's Solic'r.

And, for replication to the plea of defendant filed in said cause, this defendant denies each and every matter therein contained.

WM. BURRY,
Comp'n't's Solic'r.

We hereby consent that the above replication may be filed *nunc pro tunc* as of March 4th, 1889.

CHAMPION & HEAD, *Solicitors.*

24 Endorsed: Filed March 4th, 1889. H. M. Doak, clerk.

The following agreement of counsel was filed:

It is hereby agreed that an order shall be entered in this cause substituting J. W. Allen, present comptroller of the State of Tennessee, in place of P. P. Pickard, former comptroller, and that the answer heretofore filed by said Pickard stand as the answer of J. W. Allen.

WM. BURRY, *Comp'n't's Sol'r.*
CHAMPION & HEAD,
For Defend't.

Endorsed: Filed April 15th, 1889. H. M. Doak, clerk.

And thereupon the following order was entered, to wit:

Now come the parties hereto and show to the court that P. P. Pickard has ceased to be comptroller of the State of Tennessee and that J. W. Allen is now such comptroller; and, on stipulation of the parties hereto, it is ordered that J. W. Allen be substituted as defendant in the place of P. P. Pickard.

And now come Messrs. Champion & Head, solicitors, etc., and enter the appearance herein of J. W. Allen as defendant hereto, and with like consent of the parties it is ordered that the answer heretofore filed by said Pickard stand as the answer of said Allen.

Which order was entered of record at the April term, 1889, on April 16th, 1889.

The following depositions were taken and filed, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, County of Cook, } ss:

Be it remembered that on this the 12th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, I, K. G. Todd, a notary public, did call and cause to be and personally appear before me, at my office, at the hour and place designated in the notice attached hereto as Exhibit "A," in the city of Chicago, Richmond Dean and James F. Bird to testify and the truth to say on the part and behalf of the complainant in a certain civil cause or matter of controversy now depending and undetermined in the circuit court of the United States for the
25 middle district of Tennessee, at Nashville, wherein Pullman's Palace Car Company is complainant and the comptroller of Tennessee, formerly P. P. Pickard, now W. J. Allen, is defendant.

At the taking of said depositions I was attended by Mr. Wm. Burry, solicitor for complainant, and by Mr. Head, solicitor for defendant.

And the said RICHMOND DEAN, being about the age of twenty-nine years and having been by me *duly* first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined by Mr. BURRY on behalf of complainant, and he did thereupon depose, testify, and say as follows, viz:

Mr. Dean was not mentioned in the notice attached as Exhibit "A," but by agreement of counsel he was called in place of Mr. Garcelon, mentioned in the notice.

Int. 1. State your name, residence, and occupation.

Ans. Richmond Dean; Chicago; assistant to the general superintendent of Pullman's Palace Car Company.

Int. 2. Do you know the contract under which the Pullman Company is operating sleeping cars upon the lines of the Nashville & Chattanooga & St. Louis Railway Company?

Ans. Yes, sir.

Int. 3. Will you please produce and give to the notary, to be attached as Exhibit "B," a copy of that contract.

Ans. Yes, sir.

Int. 4. Do you know generally the terms of the contract for the operation of sleeping cars between the Pullman Company and the Louisville & Nashville Railway Company?

Ans. Yes, sir.

Int. 5. Do you know generally the terms of other contracts under which the Pullman Company operates sleeping cars in Tennessee?

Ans. I am conversant with the general terms of all the contracts.

Int. 6. Are they substantially similar to the Louisville &
26 Nashville contract just referred to?

Ans. They are all similar under which we are operating cars in Tennessee, in general terms.

Int. 7. The complainant has conductors and porters from time to time in Tennessee with its cars?

Ans. Yes.

Int. 8. Has it any other agents or representatives in Tennessee?

Ans. We have three: E. Donaldson, agent at Chattanooga; C. C. Chase, agent at Memphis, and George Zoeller, agent at Nashville.

Int. 9. State, generally, what the duties of those agents are.

Ans. Well, their duties are confined to seeing that men are provided for the cars when they leave on their runs; that they are properly furnished with supplies, such as soap, towels, etc., necessary in the operation of the cars. They also superintend the cleaning of the cars to see that they are in proper condition.

Int. 10. Do they have any general powers over the management of the company's cars?

Ans. No; they have no authority delegated to them whatever. They act entirely under the direction of the division superintendent.

Int. 11. Where is he situated?

Ans. In this case the lines in Tennessee are under Superintendent Martin, at Philadelphia.

Int. 12. Have these agents any power to make contracts or arrangements about the movements of cars except as they are directed in each case by some superintendent of the company?

Ans. None whatever.

Int. 13. Have they any other duties than that of keeping the cars in proper condition?

Ans. 13. No; none at all that I remember. Those are their principal duties.

Int. 14. I think you said that the complainant is now operating its cars under the terms of the old contract—Exhibit "B."

27 Ans. Yes; under an old contract—the Nashville, Chattanooga & St. Louis.

Cross-examination:

Cross-int. 1. Could you give me the number of cars owned by your company?

Ans. In the neighborhood of 2,000. I cannot say exactly.

— Int. 2. Could you give me the average cost of these cars?

(Objected to as immaterial.)

Ans. Well, that I could not give without consulting the records. I am not conversant with the cost of all the cars we operate.

Cr. Int. 3. What is the average capacity of each of your cars for passengers?

Ans. We figure, as a rule in furnishing cars, that they would contain ten sections or twenty berths. The majority of them have more than that number; but, generally speaking, in furnishing a car where we do not have the number designated we furnish ten sections or twenty berths.

Cr. Int. 4. You state that the copy of the contract and amendment, which you have filed as Exhibit "B" of your answer, with the Nashville, Chattanooga & St. Louis Railway Company covers the years 1887, 1888, and 1889.

Ans. Yes, sir.

Cr. Int. 5. Does your company pay any compensation for the sale of its tickets by the railway company's agents who serve you?

Ans. No, sir; none whatever.

Cr. Int. 6. I believe each of your sleeping cars has a name or number?

Ans. They are known either by name or number.

Cr. Int. 7. Could you give me the names or numbers of the various cars operated in Tennessee during the years 1887 and 1888?

Ans. I could not; no, sir. The cars are interchanged. I
28 could not give numbers or names.

Cr. Int. 8. About how many were operated in and through the State during the years 1887 and 1888?

Ans. The service of the lines was likely in the neighborhood of 75.

Cr. Int. 9. Could you give me the names of the cars used by the Nashville, Chattanooga & St. Louis Railroad Co. during the years 1887 and 1888?

Ans. No; I don't recall them, but will refer to the books and state them as a part of this deposition.

Cr. Int. 10. Will you also give me the run of each of these cars during that time?

Ans. Yes; we can give that also. The records from which answers to this question and the one before it can be best prepared are not kept in my office, but in the auditor's office, and Mr. Bird, of the auditor's office, has answered them. I have read his answers and believe them to be correct.

Cr. Int. 11. Do not the records of your office show the point from which and to which every passenger who uses your cars travels?

Ans. The diagrams would show that, but I believe it is customary only to retain them for a certain time. They are not in our office, and I could not speak definitely on the subject.

Cr. Int. 12. Does your company issue stop-over or transfer tickets from one car to another?

Ans. In some cases they issue what is called a transfer. If a car

breaks down on route and another car is available to receive its passengers we transfer them. It is always for continuous trips.

Cr. Int. —. Then your tickets are only for continuous trip?

Ans. Yes, sir.

Cr. Int. 14. Do the records of your office show a single instance where a ticket was purchased for a continuous trip from Nashville or Memphis or any intermediate point to a point outside the
29 State of Tennessee?

Ans. I cannot say; we have nothing to do with handling the checks.

RICHMOND DEAN.

J. F. BIRD, witness of lawful age, being produced on the part of complainant, and being duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says:

Int. 1. State your name, residence, and occupation.

Ans. James F. Bird, Chicago, auditor of receipts of the Pullman Company.

Int. 2. Are the diagrams or other reports of conductors showing the passengers carried on different cars of the Pullman Company returned into your office?

Ans. They are.

Int. 3. Are the regular runs of cars returned into your office?

Ans. The diagrams are.

Int. 4. Are you, generally speaking, conversant with the lines of the Pullman Company that run into or through Tennessee?

Ans. In a general way; yes.

Int. 5. Can you state generally the gross receipts of the Pullman Company per year for the last three years from lines running into Tennessee?

Ans. The amount would be in the neighborhood of $500,000 per year.

Int. 6. Please give a like approximation of what amount of those total gross earnings are taken from passengers carried locally in Tennessee on any of those lines.

Ans. Generally speaking, about $25,000 per year.

Int. 7. During the year 1887 were any cars run locally in Tennessee—that is, were any cars run between points and upon lines
30 lying wholly in the State of Tennessee?

Ans. I believe not.

Int. 8. Do the regular trips of all the Pullman cars in service on lines which lie partially within Tennessee take them also outside of the State?

Ans. They do.

Cross-examination:

Cross-int. 1. Are you familiar with the name and run of the cars operated in Tennessee running between Nashville and Memphis?

Ans. By referring to the records names could be given.

Cr. Int. 2. Will you by reference to your records give the names

and run and time of the cars operated between Nashville and Memphis during the years 1887 and 1888?

Ans. I will. By an examination of the records of my office I find that the following sleeping cars ran between Nashville and Memphis over the Nashville, Chattanooga & St. Louis railway during 1887 and 1888:

1887—Names of cars: Angora, Antilles, Bolivar, Biloxi, 182 Conestoga, Caledonia, Carbondale, Dalta, 255 Dayton, Elmore, Escort, 178 Elkmont, Eureka, Ephesus, Gallatin, Glendale, Guthrie, Hiawatha, India, Java, Kennesaw, Louisville, Lavaca, Monticello, Paoli, Palmetto, Pontotoc, 146 Saranac, Siesta, Tuscumbia, Tacitus, Talladega, Tiara, Westerly, Winetka, Woodland—36.

1888—Names of cars: Antilles, 139 Arctic, Biloxi, Bartholdi, Caledonia, Conestoga, Celtic, Capri, Delta, 255 Dayton, Elmore, 178 Elkmont, Fairview, Garden City, Guthrie, Hermione, Hispania, Kalamazoo, Louisville, Lavaca, Loretto, Monticello, Paoli, Pharoe, Poncelet, Serapis, Winatka—27.

None of these cars were operated exclusively over the N., C. & St. L. railroad during 1887 and 1888, but they were also operated over many other lines of railroad and in other States.

On their runs between Memphis and Nashville these cars, in going from Memphis to Nashville, left Memphis in the evening and arrived in Nashville in the morning. In going from Nash-
31 ville to Memphis they left Nashville in the evening and arrived in Memphis in the morning.

The many points other than Memphis and Nashville to which these cars ran during 1887 and 1888 and the times of their arrival and departure are not, as I understand the question, called for in this answer. Ascertaining them would take a very long time covering so much territory and could not be done in a week. The cars that ran from Memphis to Nashville during all of 1887 and the greater part of 1888 were required to run on from Nashville to Louisville, returning to Memphis by the same route.

Cr. Int. 3. Are the conductors' berth checks that are issued to each passenger returned into your office?

Ans. They are.

Cr. Int. 4. Do these checks not always show the point from which and to which every passenger using your cars travels?

Ans. They do.

Cr. Int. 5. Have you those checks now in your custody or control?

Ans. They are retained only for a short time. None for the years 1887 and 1888 are now in existence.

Cr. Int. 6. Do the conductors' reports show the fact?

Ans. They do.

Cr. Int. 7. Have you those reports on file for 1887 and 1888?

—. Yes; a few may be missing, but generally speaking they are on file.

Cr. Int. 8. Do the records of your office show an instance where a

passenger purchased a seat from Nashville to Memphis or from Memphis to Nashville and in the same continuous trip passed to a point outside of the State of Tennessee?

Ans. I can only tell by reference to the records.

Cr. Int. 9. Will you examine your records and answer that question?

Ans. I will. I have examined the records and been unable to find any.

32 Cr. Int. 10. I will ask you if the cars used by the Nashville & Chattanooga R'y Co. between Nashville and Memphis do not make those points as one trip for 1887 and 1888.

Ans. After examining the records I find that during all of 1887 and the greater part of 1888 the cars leaving Memphis and going direct to Nashville were required to go to Louisville before returning to Memphis, their regular trip being from Memphis to Louisville and return. During the latter part of 1888 the different sleeping cars going from Memphis to Nashville usually returned the following night to Memphis unless they were ordered away to some other point and some other car sent to Memphis in their place.

Cr. Int. 11. Could you tell how many different cars were used during the years 1887 and 1888 between Nashville and Memphis?

Ans. I find by examining the records there were 36 in 1887 and 27 in 1888.

Cr. Int. 12. You state in your direct examination that the gross earnings of all your cars operating in and through Tennessee amount to about $500,000 per annum. About how many cars would it require to perform this service?

Ans. Generally speaking, about 100.

Cr. Int. 13. You say in your direct examination that all cars used in the State of Tennessee pass to a point outside of the State of Tennessee in their regular trip. Please designate the point to which the cars running between Nashville and Memphis pass outside of the State of Tennessee.

Ans. To the best of my memory, one point is Louisville.

Cr. Int. 14. Was this running arrangement in force during the years 1887 and 1888?

Ans. During all of 1887 and the greater part of 1888.

Cr. Int. 15. Will you give the time made by these cars between Louisville and Memphis, in continuous trips, passing by Nashville?

Ans. I shall be obliged to refer to the records and will
33 then do so. The cars usually left Louisville in the evening, arriving in Nashville next morning, and left there for Memphis that evening, arriving in Memphis the following morning.

Cr. Int. 16. What do you mean by the run of a car?

Ans. Its usual run.

Cr. Int. 17. What do you mean by a continuous trip?

Ans. A trip in which there is no lay-over.

Cr. Int. 18. Do I understand you to mean, then, that the run of a car running between Louisville via Nashville and Memphis makes a continuous trip?

Ans. No, sir; I do not think they do.

Cr. Int. 19. I will ask you further if the line of railroad between Louisville and Nashville is not owned by the Louisville & Nashville R. R. Co., and that between Nashville and Memphis by the Nashville, Chattanooga & St. Louis R. R. Co.

Ans. I believe so.

Redirect examination:

Int. 1. You have been asked several questions about cars running between Nashville and Memphis in 1888. I will ask you about all other cars of complainant operated in Tennessee, if any of them run solely between points within Tennessee, or if they run from without the State into it during that time.

Ans. None of them whatever ran local. All were interstate.

Int. 2. Do cars of complainant always remain upon the same route?

Ans. They do not.

Int. 3. Do cars run between any two points, such as Nashville, Tennessee, and Atlanta, Georgia, sometimes get changed off on to other runs?

Ans. They do.

Int. 4. Does this occur frequently?

Ans. It does.

Int. 5. What governs such changes?

34 Ans. The operating department can best answer that question; I presume for convenience of operating or to meet demands of travel.

Int. 7. Is the operation of cars and keeping accounts and ascertaining them easier when they are operated in long lines or short ones for the same number of miles operated?

Ans. In long lines.

JAMES S. BIRD.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, County of Cook, }

I, K. G. Todd, a notary public, do hereby certify that the reason for taking the foregoing depositions is and the fact is the witnesses are material and necessary in the cause in the caption of the said depositions named, and that they reside more than one hundred miles from where is held the court in which the above-mentioned cause is to be tried.

I further certify that notification of the time and place of taking the said depositions was made out and served on the defendants and service thereof accepted in the manner shown by the notice hereto attached as Exhibit "A."

I further certify that on the 12th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, I was attended by William Burry for complainant and Mr. Head for defendant and by the witnesses, who were of sound mind and lawful age, and the witnesses were first by me carefully cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the

witnesses, and after reading the same to the witnesses they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the court for which they were taken.

And I do further certify that I am not of counsel nor
35 attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and notarial seal this 15th day of October, 1889, and of the Independence of the United States the 113th year.

[NOTARIAL SEAL.]

K. G. TODD,
Notary Public.

The following is Exhibit " A," referred to in the foregoing deposition :

To Messrs. Champion & Head, defendant's solicitors :

Please take notice that at 12 o'clock noon on Saturday, the 12th day of October, 1889, in room 204 in the Pullman building, situated on the southwest corner of Adams street and Michigan avenue, in the city of Chicago and State of Illinois, I will proceed, before K. G. Todd, notary public, or some other officer authorized by law, to take the depositions of T. H. Wickes, C. A. Garcelon, F. C. N. Robertson, and James F. Bird ; said depositions, when taken, to be read at the hearing in said cause on behalf of complainant, and the taking of said depositions will be continued from day to day until completed. The reason for taking said depositions is that all of said witnesses reside in Chicago aforesaid more than one hundred miles distant from the place of trial.

Chicago, October 4th, 1889.

WM. BURRY,
Comp'n't's Solicitor.

Due service of the above notice acknowledged the 7th day of October, 1889.

CHAMPION & HEAD, *Attorneys.*

The following is Exhibit " B " referred to in the foregoing deposition :

This indenture, made this eleventh day of April, A. D. 1872, between the Nashville & Chattanooga Railroad Company, the party of the first part, and the Pullman Southern Car Company, of the second part :

Whereas the party of the second part is now engaged in the business of manufacturing railway cars known as drawing-room
36 and sleeping cars, under certain patents belonging to them, and of hiring the same to railway companies under written contracts for a term of years, to be used and employed on and over the lines of the roads of said railway companies, receiving therefor

income and revenue by the sale to passengers of berths, seats, and accommodations therein;

And whereas the said first party is desirous of availing itself of the use, on and over its lines of road, of the cars constructed under the sleeping and drawing-room car patents, now the property of the second party; also of connections by means of said cars with other lines of railway whereon said cars are now operated by said second party: Now this contract witnesseth:

First. That the said party of the second part, in consideration of the covenants and agreements of the party of the first part hereinafter mentioned, to be by them kept and performed, hereby agrees with the said party of the first part that they will furnish drawing-room cars and sleeping cars, to be used by said party of the first part for the transportation of passengers sufficient to meet the requirements of travel over their line of railroad and on and over all lines of railroad which they now control or may hereafter control by ownership, lease, or otherwise, the said cars to be satisfactory to the general superintendent of the said first party.

Second. The said party of the second part hereby agrees that it will keep the carpets and upholstery and bedding of each of the said cars in good order and repair and renew and improve the same, when necessary, at its own expense, except repairs and renewals made necessary by accident or casualty, it being understood that the said first party shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract.

Third. The said party of the second part hereby agrees at their own cost and expense to furnish one or more employés, as may be needful, upon each of said cars, whose duties it shall be to collect fares for the accommodations furnished in said cars and gen-
37 erally to wait upon passengers in said cars and provide for their comfort.

Fourth. The said party of the first part hereby agrees that the general officers of said second party and the employés named in article third of this agreement shall be entitled to free passage over the lines of the first party when they are on duty for the said second party.

Fifth. The party of the second part hereby agrees that the general officers of the first party shall be entitled to free passes in any of the cars furnished by said second party under this agreement.

Sixth. It is hereby mutually agreed that the said employés of the second party, named in article third of this contract, shall be governed by and subject to the rules and regulations of the said first party, which are or may be adopted from time to time for the government of their own employés, and, in the event of any liability arising against said first party for personal injury, death, or otherwise of any employé of the said second party, it is hereby distinctly agreed that the said first party shall be liable only to the same extent they would be if the person injured was an employé in fact of the said first party, and for all liability in excess shall be indemnified and paid by said second party.

witnesses, and after reading the same to the witnesses they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the court for which they were taken.

And I do further certify that I am not of counsel nor
35 attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and notarial seal this 15th day of October, 1889, and of the Independence of the United States the 113th year.

[NOTARIAL SEAL.]

K. G. TODD,
Notary Public.

The following is Exhibit " A," referred to in the foregoing deposition :

To Messrs. Champion & Head, defendant's solicitors:

Please take notice that at 12 o'clock noon on Saturday, the 12th day of October, 1889, in room 204 in the Pullman building, situated on the southwest corner of Adams street and Michigan avenue, in the city of Chicago and State of Illinois, I will proceed, before K. G. Todd, notary public, or some other officer authorized by law, to take the depositions of T. H. Wickes, C. A. Garcelon, F. C. N. Robertson, and James F. Bird ; said depositions, when taken, to be read at the hearing in said cause on behalf of complainant, and the taking of said depositions will be continued from day to day until completed. The reason for taking said depositions is that all of said witnesses reside in Chicago aforesaid more than one hundred miles distant from the place of trial.

Chicago, October 4th, 1889.

WM. BURRY,
Comp'n't's Solicitor.

Due service of the above notice acknowledged the 7th day of October, 1889.

CHAMPION & HEAD, *Attorneys.*

The following is Exhibit " B " referred to in the foregoing deposition :

This indenture, made this eleventh day of April, A. D. 1872, between the Nashville & Chattanooga Railroad Company, the party of the first part, and the Pullman Southern Car Company, of the second part:

Whereas the party of the second part is now engaged in the busi-
ness of manufacturing railway cars known as drawing-room
36 and sleeping cars, under certain patents belonging to them, and of hiring the same to railway companies under written contracts for a term of years, to be used and employed on and over the lines of the roads of said railway companies, receiving therefor

income and revenue by the sale to passengers of berths, seats, and accommodations therein;

And whereas the said first party is desirous of availing itself of the use, on and over its lines of road, of the cars constructed under the sleeping and drawing-room car patents, now the property of the second party; also of connections by means of said cars with other lines of railway whereon said cars are now operated by said second party: Now this contract witnesseth:

First. That the said party of the second part, in consideration of the covenants and agreements of the party of the first part hereinafter mentioned, to be by them kept and performed, hereby agrees with the said party of the first part that they will furnish drawing-room cars and sleeping cars, to be used by said party of the first part for the transportation of passengers sufficient to meet the requirements of travel over their line of railroad and on and over all lines of railroad which they now control or may hereafter control by ownership, lease, or otherwise, the said cars to be satisfactory to the general superintendent of the said first party.

Second. The said party of the second part hereby agrees that it will keep the carpets and upholstery and bedding of each of the said cars in good order and repair and renew and improve the same, when necessary, at its own expense, except repairs and renewals made necessary by accident or casualty, it being understood that the said first party shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract.

Third. The said party of the second part hereby agrees at their own cost and expense to furnish one or more employés, as may be needful, upon each of said cars, whose duties it shall be to collect fares for the accommodations furnished in said cars and gen-
37 erally to wait upon passengers in said cars and provide for their comfort.

Fourth. The said party of the first part hereby agrees that the general officers of said second party and the employés named in article third of this agreement shall be entitled to free passage over the lines of the first party when they are on duty for the said second party.

Fifth. The party of the second part hereby agrees that the general officers of the first party shall be entitled to free passes in any of the cars furnished by said second party under this agreement.

Sixth. It is hereby mutually agreed that the said employés of the second party, named in article third of this contract, shall be governed by and subject to the rules and regulations of the said first party, which are or may be adopted from time to time for the government of their own employés, and, in the event of any liability arising against said first party for personal injury, death, or otherwise of any employé of the said second party, it is hereby distinctly agreed that the said first party shall be liable only to the same extent they would be if the person injured was an employé in fact of the said first party, and for all liability in excess shall be indemnified and paid by said second party.

Seventh. The party of the first part, in consideration of the use of the aforesaid cars, hereby agrees to haul the same on the passenger trains on their own line of road and on all roads which they now control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may, by virtue of contracts or running arrangements with other roads, have the right to use such cars in such manner as will best accommodate passengers desiring the use of said cars.

And the said party of the first part shall, at their own expense, furnish fuel for the cars and materials for the lights, shall wash and cleanse said cars, and shall also keep said cars in good running order and repair, including renewals of worn-out parts, and all
38 things appertaining to said cars necessary to keep them in first-class condition, except such as are provided for in article second of this agreement.

Eighth. The party of the first part agrees to furnish to said second party, without charge, at convenient points, room and conveniences for airing and storing bedding.

Ninth. The said party of the first part further agrees that the said party of the second part shall be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be mutually agreed upon as will most favor the renting of seats and couches in said cars.

Tenth. The party of the first part hereby agrees to permit the party of the second part to place its tickets for seats and couches for sale in such of the railway ticket offices as may be desired by said second party, and such service shall be performed by and as a part of the general duties of the ticket agents and without charge to the party of the second part; proceeds of such sales to be at the risk of said second party.

Eleventh. The party of the first part hereby agrees that said second party shall have the exclusive right for a term of fifteen years from the date hereof to furnish for the use of said first party drawing-room cars or parlor cars and sleeping cars, including reclining-chair cars, on all the passenger trains of said first party and over their entire line of railroad and on all roads which they control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may by virtue of contracts or running arrangements with other roads have the right to use such cars, and that they will not contract with any other parties to run said class of cars on and over said lines of road during said period of fifteen years.

Twelfth. The said party of the second part, for the consid-
39 eration aforesaid, hereby guarantees said first party against all damages of whatever kind which may be by said first party incurred in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by said second party upon the lines of said first party under this agreement, it being the meaning and intent of this article that said second party shall secure said first party against all manner of expenditures which

may be incurred by said first party in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that they will pay off and discharge all judgments obtained at any time against said first party on account of such infringements.

Thirteenth. It is mutually agreed between the parties hereto that in case either of said parties shall at any time hereafter fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then and in that case, after written notice shall have been given to the defaulting party hereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep, and perform such unfulfilled covenants and conditions of this agreement within a reasonable time after such notice the other party shall be at liberty to declare this contract ended and no longer in force.

Fourteenth. It is mutually agreed between the parties hereto that all equipments that may be put upon the road of said first party under this agreement shall be represented by stock in amount at par value exactly equal to the cost of said equipment, such stock to be either the Pullman Southern Car Company's stock, issued by that company, or to be stock issued by a new company to be organized by the parties hereto under the name of the Nashville & Chattanooga Car Company.

It is further agreed that said first party shall have the right and option to determine which of the two above-mentioned ways shall be followed—that is, whether, for the equipment to be put upon its road under this agreement, the stock of the Pullman Southern Car Company shall be issued or the stock of a new company, to be organized as above designated; but it is also agreed that such option and right of determination shall be exercised by the first party, if at all, and communicated to the second party in writing within twelve months from the date hereof. In the event of said first party either failing or neglecting to inform said second party in writing of its conclusions in the premises within the time specified above it is understood between the parties hereto that stock for said equipment shall be issued by the Pullman Southern Car Company.

It is further agreed that each party to this agreement shall be entitled to take, upon paying therefor at the lowest price at which such stock shall have been issued by the party of the second part, one-half of the stock representing the equipment that may be placed upon said first party's road under this agreement.

It is understood and agreed between the parties hereto that the sleeping cars now on the line of the first party, named respectively Memphis, Nashville, Virginia, Decatur, Fairview, and Winetka, are hereby accepted, and are to be put in first-class condition by the respective parties under the provisions of this contract.

It is agreed that the acceptance of the cars Memphis, Nashville, Virginia, and Decatur, as hereinabove recited, is for the period of seven years and six months, or a less time: Provided, that in the judgment of the president of the party of the first part the business

shall sooner require better equipment, in which case the party of the second part hereby agrees to furnish first-class cars in lieu of the cars hereinabove mentioned whenever the said first party shall make requisition for the same, and agree to guaranty the second party gross earnings for each of said cars to be so furnished of three hundred dollars per month.

41 In witness whereof the party of the first part has caused its corporate seal to be attached hereto by the president and secretary, and the party of the second part hath caused its corporate seal to be attached hereto in like manner, attested by its president and secretary.

Dated the day and year first written above.

NASHVILLE & CHATTANOOGA R. R. CO.,
[L. S.] By E. W. COLE, *President.*
THE PULLMAN SOUTHERN CAR CO.,
[L. S.] By GEO. M. PULLMAN, *President.*

Attest: S. M. LEMONT, *Secretary.*

EXHIBIT "B" Continued.

Whereas the Nashville & Chattanooga & St. Louis railway and the Pullman Southern Car Company heretofore, to wit, on the eleventh day of April, 1872, entered into a contract in writing herein and hereafter referred to;

And whereas the said named parties have agreed upon certain changes in said contract, and, in consideration of a settlement growing out of said contract, the terms of which settlement have been fully complied with by both parties, have made the following agreement:

Now, this contract of agreement made and entered into this the first day of January, 1879, between the said Nashville, Chattanooga & St. Louis railway, of the first part, and the Pullman Southern Car Company, of the second part, witnesseth:

First. That the Pullman Southern Car Company hereby agrees to furnish the party of the first part the sleeping cars Fairview, Winetka, and Etowah, the same having been selected and accepted by the party of the first part as being now in good order and condition and equal to the demands of travel on the railroad of the first party, and from this date the said Pullman Southern Car Company will maintain said cars in good order and condition at its own expense, so far as ordinary wear is concerned, except as hereinafter excepted and provided for.

Second. In consideration of the above and foregoing obli-
42 gation on the part of the Pullman Southern Car Company the said Nashville, Chattanooga & St. Louis railway hereby agrees, monthly and at the end of each month, to pay said Pullman Southern Car Company three cents per mile for each car run by it on its lines of road, and further agrees and obligates itself to be liable for all damages to any or either of said cars so named or to such other cars as the increase of travel may require to be furnished under this

and the original contract referred to or cars placed in lieu of said cars while shopped on its road during the existence of this contract, except such damage resulting from defective heating apparatus or lighting apparatus or to glass or to globes or to heating and lighting apparatus caused by the employés of the Pullman Southern Car Company.

Third. The said Nashville, Chattanooga and St. Louis railway hereby agrees to supply at its own expense all the material necessary for lighting and heating said cars; also to furnish and apply the lubricating material for the journals of said cars, and to supply ice and water in sufficient quantities for the use of passengers occupying said cars, and shall also wash and cleanse said cars as the same may be required.

Fourth. The Nashville, Chattanooga and St. Louis railway hereby agrees to permit the Pullman Southern Car Company to place its tickets for seats or berths on sale in the ticket offices of the said railway without charge to the Pullman Southern Car Company, the proceeds of such sales to be at the risk of the Pullman Southern Car Company, and permit the said Pullman Southern Car Company to collect from each and every person occupying said cars for such occupancy such sum for the same as is usual on competing lines furnishing equal accommodations.

Fifth. The Pullman Southern Car Company agrees hereby that the general officers of the said Nashville, Chattanooga and St. Louis railway shall be entitled to free passes in said cars furnished and to be furnished as aforesaid by the Pullman Southern Car Company under this contract.

43 Sixth. The said Nashville, Chattanooga and St. Louis railway hereby agrees that the general officers of the Pullman Southern Car Company shall pass free over its said lines of railroad.

Seventh. It is agreed by the parties of the first and second parts hereto that the contract now existing and herein and hereinbefore referred to between them shall be so far changed as that the sleeping cars furnished and to be furnished as herein provided for shall be placed on a mileage basis, to commence from the first day of January, 1879, and that said party of the first part shall pay to the party of the second part at the end of each month during the continuance of this contract three cents per mile for each car run over its said lines of railroad; this contract to be of full force as if herein repeated for the balance of the unexpired term of the contract entered into between the parties on the eleventh day of April, 1872, or until the 11th day of April, 1887.

Eighth. It is agreed by the parties hereto that should the party of the second part during the continuance of this contract reduce its mileage contracts with other railroads less than three cents a mile the benefit of such reduction shall avail to that extent the party of the first part.

Ninth. It is further agreed that if the air-brake hose is broken from other causes than the effect of wear it shall be replaced by the party of the first part; otherwise by the party of the second part.

Tenth. It is agreed and understood that this contract does not

annul the contract entered into on the 11th day of April, 1872, between the said parties, but it is supplemental thereto and changes the same only as the same is specifically expressed. All other parts of the original contract are operative.

Signed, sealed, and delivered by the legal representatives of the said companies hereto and who have caused to be affixed the corporate seals of their companies respectively hereunto.

For the Nashville, Chattanooga and St Louis railway—

44 [SEAL.] J. W. THOMAS, *General Sup't.*

Attest: R. C. BRANSFORD, *Sec'y.*

[SEAL.] THE PULLMAN SOUTHERN CAR CO.,
By GEO. M. PULLMAN, *Pres't.*

Attest: A. S. WEINSHEIMER, *Sec'y.*

EXHIBIT "B" Continued.

Subject: Contract with N., C. & St. L. R. R.

Pullman's Palace Car Company, superintendent's office.

CINCINNATI, *April 23d*, 1887.

T. H. Wickes, Esq., general superintendent, Chicago, Ill.

DEAR SIR: I have to advise you that I have made an arrangement with Col. J. W. Thomas, president and general manager N., C. & St. L. R. R., that, until a new contract with his company is agreed to, we will operate the line of sleeping cars over his road under the terms of the old contract, which expired on the eleventh inst.

Very respectfully, JAMES MARTIN, *Sup't.*

The following stipulation was filed:

PULLMAN'S PALACE CAR COMPANY
v.
P. P. PICKARD, Comptroller,

&

PULLMAN'S PALACE CAR COMPANY
v.
J. W. ALLEN, Comptroller.

It is hereby agreed that the above two causes may be heard together, and that depositions and testimony taken in either of them may be used upon the hearing of the other with like effect as if taken therein.

WM. BURRY,
Sol'r for Comp'nt.
CHAMPION & HEAD,
Sol. Def't.

The foregoing stipulation is endorsed: Filed April 21st, 1890. H. M. Doak, clerk.

The same is also entered of record upon the minutes of the court.

The following subpœna was issued:

The President of the United States to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon Truman Kellogg and H. Craik, conductors on the sleeping cars *be* Nashville and Memphis—N., C. & St. L. R. R.—if to be found in your district, personally to be and appear before the judges of the circuit court of the United States for the middle district of Tennessee, in the sixth circuit, at the Federal court-room, at Nashville, State of Tennessee, then and there to testify and the truth to speak on behalf of the defendant in a certain matter of controversy in said court depending, wherein Pullman's Palace Car Company is complainant
45 and J. W. Allen, comptroller of the State of Tennessee, is defendant; and this you will in nowise omit under penalty of the law.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 16th day of April, 1890, and of American Independence the 114th year.

H. M. DOAK, *Clerk.*

Endorsed: Executed on the 17th day of April, 1890, by summoning the within-named witnesses, Truman Kellogg and H. Craik, as herein commanded, in Davidson county, two miles from Nashville. W. T. Wright, dep. mar.

The following deposition was filed:

Caption, certificate, and other formalities waived in the deposition of Hewitt Craik and Truman Kellogg, witnesses for the defendant.

HEWITT CRAIK, being first called and sworn, deposed as follows:

Question 1. State your residence and occupation.

Answer. Residence, Nashville; occupation, Pullman car conductor.

Quest. 2. Are you engaged on the line of sleepers running between Nashville and Memphis, Tennessee? If so, how long have you been so engaged?

Ans. There is no line running between Nashville and Memphis. The line is between Memphis and Atlanta, and No. 525, running via Nashville.

Question 3. Please state the time your cars make—that is, the time of your departure and arrival at Nashville, Memphis, and Atlanta.

Answer. We leave Memphis at 9.50 p. m.; reach Nashville at 7 a. m. next morning; lie in Nashville all day; leave at 8.15 p. m. for Atlanta, reaching there at 6.32 a. m. the following morning; lie there all day; returning, leave at 6.38 a. m., reaching Nashville at 5.10 a. m. next morning; lie there all day, leaving at 7.35 p. m., arriving at Memphis at 5.15 a. m. the following morning.

Quest. 4. Was this schedule in force during the year 1889, and

did you operate sleeping cars on this schedule during any portion of that year?

Ans. No, sir.

46 Quest. 5. Did you at any time during the year 1889 receive one or more passengers on your car at a point within the State of Tennessee and transport them to another point in this State, they being transported wholly within the limits of this State?

Ans. Yes.

HEWITT CRAIK.

Sworn to and subscribed before me this April 21st, 1890.

E. R. CAMPBELL,
U. S. Dist. Clerk.

The foregoing deposition is endorsed: Filed April 21st, 1890. H. M. Doak, clerk.

No deposition of Truman Kellogg was taken or filed.

The following commission to take depositions on behalf of the defense was issued by H. M. Doak, clerk of the U. S. circuit court for the middle district of Tennessee, who is authorized by a rule of court to issue such commission, on the 21st day of October, 1889, to wit:

The President of the United States to E. A. Price, Esq., Greeting:

Know ye that, reposing special trust in your diligence and fidelity, you are by these presents appointed and invested with full power and authority to cause to come before you, at the office of Champion, Head & Brown, on some day to be by you appointed, J. W. Thomas, George Knox, A. H. Robinson, W. W. Knox, W. L. Danley, and M. J. C. Wrenne and examine them upon their corporal oath upon interrogatories and cross-interrogatories hereunto attached as witnesses on behalf of the defendants in a certain cause depending in the circuit court of the United States for the middle district of Tennessee, wherein Pullman's Palace Car Company is complainant and J. W. Allen, comptroller of the State of Tennessee, is defendant, said depositions, when taken, to be read as evidence on the part of the defendant on the trial of said cause, and when you have taken their testimony and reduced the same to writing you will return the same, with this commission, closed up under your seal, to the clerk of said circuit court, at Nashville, Tennessee, with all convenient speed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of our said court, at Nashville, this the 21st day of October, 1889, and of American Independence the 114th year.

H. M. DOAK, *Clerk.*

47 Then follows the caption, to wit:

The deposition of J. W. Thomas, witness for defendant in the above cause, taken upon notice on the 22nd day of October at the office of Champion, Head & Brown, Cole building, Nashville, Tennessee, in the presence of A. A. Champion, attorney for the defendant, no one being present for the complainant.

The said witness, being duly sworn, deposed as follows:

Int. 1. Please state what connection you have with the Nashville Chattanooga & St. Louis railway, and how long you have filled that position.

Ans. I am president and general manager; have been president five years and general manager nine years.

Int. 2. How many cars does complainant run over your line and under what contract?

Ans. Four sleepers and two parlor cars. We pay three cents a mile for the sleepers and two and a half cents for the parlor cars.

Int. 3. If you know, name the cars that run between Nashville and Memphis.

Ans. Do not remember the names of the cars.

Int. 4. State if it is not the custom of the cars that make the run between Nashville and Memphis to come from Louisville or Atlanta, arriving in Nashville in the morning and remain here until about seven o'clock in the evening and then continue their trip to Memphis.

Ans. The parlor cars run between Louisville and Atlanta, leaving Nashville 7.30 a. m. and Atlanta 6.30 p. m.; leave Atlanta 8 a. m.; arrive at Nashville 7 p. m. Sleepers leave Atlanta 6 p. m.; reach Nashville at 5 a. m.; lie over until 7.30 p. m., and reach Memphis about 5 a. m.; returning, leave Memphis 10 p. m.; arrive at Nashville 7 a. m.; lie over until 8 p. m.; reach Atlanta 6 a. m.

Int. 5. Please state if tickets are ever sold from Atlanta or intermediate points for points beyond Nashville to be used upon the sleepers arriving at Nashville in the morning.

48 Ans. I don't know.

Int. 6. Do the cars leaving Nashville in the evening ever go to points beyond Memphis?

Ans. Very seldom, if ever.

Int. 7. Do the sleepers reaching here from Memphis in the evening invariably go to Atlanta in the evening?

Ans. As a general rule they do; there may be occasional exceptions.

Int. 8. Are certain specified cars assigned to service on your road, or does the complainant exercise its own convenience and make changes?

—. Four sleepers are assigned to our road, and they are not changed except for repairs or in case of accident.

Int. 9. How long has the custom above described prevailed? And state if, until recently, two cars did not do the entire service between Nashville and Memphis and not go elsewhere.

Ans. I think so, but do not know when the change was made.

Int. 10. From whose office could we get that information?

Ans. The records of the movements of cars are kept in the superintendent's office.

Int. 11. State, if you know, if the change was not made for the purpose of avoiding the privilege tax.

(Objected to by complainant.)

Ans. I think so, but do not know positively.

Int. 12. How many cars were used between Nashville and Memphis before the change was made?

Ans. Two.

Int. 13. The parlor cars running between Nashville and Memphis invariably lie over at Nashville and Memphis during the night, do they not, or was not this the custom before the parlor car was discontinued between Nashville and Memphis?

Ans. No parlor-car line between Nashville and Memphis for some months past. When the line was run the cars lay over at
49 night at Nashville and Memphis.

Int. 14. State if they did not run alone between Nashville and Memphis and when was the line discontinued.

Ans. I do not know when the line was discontinued. The records of the superintendent's office —. Two cars ran exclusively between Nashville and Memphis.

Int. 15. Is it not true that the sleepers arriving at Nashville in the morning from Atlanta and Memphis could make close connection instead of lying over all day?

Ans. They could do so if the railroads were willing to bear the expense of hauling them on day trains, which we are not willing to do.

And further deponent sayeth not.

J. W. THOMAS.

Complainant's counsel object to all of Mr. Thomas' deposition which relates to parlor cars.

The foregoing deposition was taken before me as stated in the caption and reduced to writing by me, and I certify that I am not interested in the cause, and that I am not of kin or counsel to either of the parties; that I sealed *them* up and delivered *them* to the clerk of the United States circuit court at Nashville, Tennessee, without being out of my possession or altered after it was taken.

Given under my hand the 22nd day of October, 1889.

[NOTARIAL SEAL.] EDWIN E. PRICE,
Notary & Spec'l Comm'r.

The following other depositions were filed:

Depositions of W. L. Danley, W. W. Knox, M. J. C. Wrenne, witnesses for the defendant in the above cause, taken upon notice on the 23d and 29th of October, 1889, at the office of Champion, Head & Brown, Cole building, Nashville, Tennessee, in the presence of attorneys for both parties.

Said witnesses, being of lawful age, were first duly sworn and deposed as follows:

W. L. DANLEY, of competent age, being duly sworn, deposed as follows:

50 Int. 1. Please state what position you occupy and how long you have been so engaged.

Ans. I am general passenger agent of the Nashville & Chattanooga Railway Company since September, 1868.

Int. 2. How many sleeping and parlor cars has your company used since 1886?

Ans. That is a matter of record in the transportation department, and I could not say.

Int. 3. Assuming that four Pullman sleeping cars run over your road, please state when they arrive at Nashville and when take their departure.

Ans. They usually arrive here in the morning between, say, 5 and 7.30, and leave between 7 and 8.15 at night.

Int. 4. Why are these cars detained at Nashville during the day?

Ans. They are detained because we run no sleeping cars over our lines in the day-time, and it is also necessary to clean them, which they do here.

Int. 5. Please state if it was not the custom of the company until recently to run two cars between Nashville and Memphis and the cars assigned to this line did not go elsewhere, and, if a change has been, why was that done.

Ans. During part of the time I think that they had two cars assigned to the Memphis line. I don't know about the change.

Int. 5. Who sells the tickets of the complainant over your line?

Ans. By W. W. Knox, ticket agent Union depot, and A. H. Robinson, ticket agent at the Maxwell House.

Int. 6. Is it not true that the change under which these cars running exclusively between Nashville and Memphis were discontinued was made for the purpose of avoiding the payment of the privilege tax assessed by the Legislature?

Ans. All changes which have been made were made at the instance of the Pullman Company, and they have never assigned any reason for the changes.

51 Interrogatory 7. State, as nearly as you can, about what the gross earnings received by the Pullman Company for local traffic would amount to for the year.

Ans. I have very little idea what their gross earnings are.

And further deponent saith not.

W. L. DANLEY.

Counsel for complainant objects to all of Mr. Danley's testimony which relates to parlor cars, and also to all his testimony about movements of cars, as he does not appear to speak of his own knowledge of them.

Witness, W. W. KNOX, aged 42, being duly sworn, deposed as follows:

Int. 1. What position do you occupy and how long have you been thus employed?

Ans. Ticket agent at the Union depot in Nashville; since February, 1884.

Int. 2. Do you, by yourself or through others, sell tickets for the Pullman Company; if so, under what sort of contract with complainant?

Ans. I sell their tickets by instructions from the management of the railroad company.

Int. 3. What compensation, directly or indirectly, does the railroad company get for this service?

Ans. I do not know.

Int. 4. State if tickets are ever sold on the sleeper which goes to Memphis at night for points beyond Memphis.

Ans. No, sir.

Int. 5. Why not?

Ans. The sleeper only runs to Memphis.

Int. 6. Does the same sleeper return to Nashville the next night; if so, are tickets ever sold from that point to points beyond Nashville?

Ans. I do not know.

Int. 7. How many sleepers run between Nashville and Memphis?

Ans. One from Nashville to Memphis every night and one
52 arriving at Nashville from Memphis every morning.

Int. 8. Please give the names of the sleepers assigned to the Nashville, Chattanooga & St. Louis railway.

Ans. I do not know.

Int. 9. During what period were certain cars used exclusively between Nashville and Memphis?

Ans. Well, I can't tell, because I don't know to what line the cars are assigned.

Int. 10. Is it not true that until recently two cars belonging to the Pullman Company were run exclusively between Nashville and Memphis and no other cars were used for that purpose, except when these were withdrawn for repairs or in case of accident?

Ans. I have understood that such was the case, but do not know of my own knowledge. I keep no record of any kind of the movement of sleeping cars.

Int. 11. If such was the case when, according to the best of your information, was this custom discontinued?

Ans. I can't say of my own knowledge that it is discontinued, because I know nothing about it.

Int. 12. State as near as you can the amount derived from the

sale of sleeping-car tickets sold at your office annually to be used between Nashville and Memphis.

Ans. I think between two and three thousand dollars.

Int. 13. The amount between Nashville and Chattanooga?

Ans. Not over one hundred dollars a year.

Int. 14. That is because it goes to Atlanta, is it not?

Ans. Yes, sir.

Int. 15. How many parlor cars are used by the Nashville and Chattanooga road and between what points do they run?

Ans. Two are used between Nashville and Atlanta.

Int. 16. How long have these cars been discontinued between Nashville and Memphis?

53 Ans. I do not know.

And further deponent saith not.

W. W. KNOX.

Counsel for complainant objects to all of Mr. Knox's testimony which relates to parlor cars and to all statements made by him concerning matters not within his personal knowledge.

Witness, M. J. C. WRENNE, being duly sworn, deposed as follows:

Int. 1. How and where are you engaged, and how long have you been engaged in that capacity?

Ans. Superintendent of the Nashville and Chattanooga railway, and so engaged since 1880.

Int. 2. What are your duties?

Ans. I have charge of the transportation department.

Int. 3. How many Pullman sleeping and parlor cars are assigned to your road?

Ans. Four sleepers and two parlor cars.

Int. 4. How long have these cars been used by your road?

Ans. The cars we are using now we had possibly two years or more; we may not have had them so long. I do not remember when we got the parlor cars.

Int. 5. How many cars run between Nashville and Memphis?

Ans. It takes two cars to fill the line between Nashville and Memphis.

Int. 6. State if — is true that until lately two cars ran exclusively between Nashville and Memphis; and, if so, when was that custom commenced and when discontinued.

Ans. For the last fifteen or eighteen months, more or less, two cars were running between Nashville and Memphis, unless replaced by other cars when these cars were in the shop. This was so until about the first of September, when the cars began to run alternate trips to Atlanta and Memphis.

Int. 7. State if these cars while thus engaged were not the
54 only sleepers used in that service, except temporarily in case of accident or when withdrawn for repairs.

Ans. These four cars came to us as new cars. Two of them

for awhile ran between Nashville and Atlanta, and were then transferred to the Memphis line, or the contrary.

Int. 8. Why were these changes which you mentioned in your last answer made?

Ans. The changes were made by the Pullman people to get the cars in line to suit themselves.

Int. 9. Was there any reason for it known to you?

Ans. The cars came at different times, and the two newest ones were put on the preferred line.

Int. 10. Is it not true that the two cars or some other two cars belonging to the complainant were used almost exclusively between Memphis and Nashville during the years 1885, 1886, 1887, and 1888? If not, please state from your books just what portion of this period the custom covered.

Ans. Will examine my books and attach my answer as an exhibit to my deposition.

Int. 11. Please explain the difference in the use of sleeping and parlor cars.

Ans. The sleeping car is fitted up with beds and the parlor car has only chairs in it. The parlor car is used on the day trains; the sleepers on the night trains.

Int. 12. How long since your first using the parlor cars between Nashville and Memphis?

Ans. About May 12th, 1887.

Int. 13. How many had been used before that time and for what length of time?

Ans. Two; for about a year.

Int. 14. Please examine your books and state the exact time and the dates.

55 Ans. I will do so.

(N. B.—The further taking of this deposition was adjourned until 3 p. m. October 28th, 1889.—Edwin A. Price, comm'r.)

The taking of the deposition of M. J. C. WRENNE was resumed at 10.30 a. m. of October 29th.

Present: Wm. Burry, attorney for complainant, and J. M. Head, attorney for defendant.

Int. 15. How many sleeping cars are necessary to transact the business between Nashville and Memphis?

Ans. Ordinarily two cars, one leaving Nashville and one Memphis each night.

Int. 16. Was this the number of sleeping cars used by your road between Memphis and Nashville during the years 1887 and 1888?

Ans. Yes, sir.

Int. 17. Were these cars furnished by the complainant, The Pullman Palace Car Company?

Ans. Yes, sir.

Int. 18. Is it necessary for the convenience of the travelling public that the sleeping cars doing business between Nashville and Memphis should at any time go outside of the State of Tennessee?

Ans. Not if the cars are in first-class running order.

Int. 19. Give the time that these sleepers left Nashville and Memphis and when they arrived at each of these points during the years 1887 and 1888.

Ans. The sleepers left Nashville between the hours of seven and eight p. m., arriving in Memphis between four and six a. m.

Int. 20. At what time did these sleepers arriving in Nashville and Memphis respectively during the morning leave these points during the years 1887 and 1888?

Ans. The following evening, if to go back over the same line.

Int. 21. During the years 1887 and 1888 were sleeping-car tickets ever sold from Nashville to Memphis or any intermediate point to a point beyond the limits of Tennessee?

56 Ans. I can't answer as to where the tickets are sold to.

Counsel for complainant objects to all of Mr. Wrenne's testimony which in any way relates to parlor cars.

Cross-examined:

1 Cr. Int. In answer to interrogatory 18 you stated that two sleeping cars were run between Nashville and Memphis during 1887 and 1888. Did you mean that only different sleeping cars were run between those points at that time?

Ans. No, sir; I meant that two cars would fill the line and they were liable to be changed by the Pullman Company and were often changed.

2 Cr. Int. Did your company sometimes during that period call upon complainant for extra sleeping cars to meet emergencies or unexpected demands of business?

Ans. Yes, sir; when business demanded extra sleepers were asked for, and if the Pullman Company had them they were furnished.

3 Cr. Int. Please state by months the number of different sleeping cars operated each month by complainant over railroad between Nashville and Memphis during 1887 and 1888.

Ans. I find that in 1887, in January, 8 different cars; February, 9; March, 10; April, 18; May, 11; June, 8; July, 11; August, 13; September, 8; October, 14; November, 9; December, 4. In 1888, in January, 10; February, 9; March, 7; April, 6; May, 11; June, 6; July, 4; August, 5; September, 6; October, 2; November, 2; December, 4.

4 Cr. Int. Please state how many different cars were used in 1887.

Ans. I find that there were forty-one cars used in 1887.

5 Cr. Int. Please state the number so used in 1888.

Ans. Twenty-six.

6 Cr. Int. You spoke of cars being assigned to your road by the Pullman Company. Do you mean by that the allotment of certain specific cars to your road, which the Pullman Company was not at liberty to change, to suit the emergencies of business?

57 Ans. The cars belong to the Pullman Company, and they can change them any time they want to.

7 Cr. Int. Then, by what you said in that regard, you simply meant that the complainant was required to do a certain amount of sleeping-car service on your road, using good equipment therefor, and that you thought a certain number of cars run continuously could do that service?

Ans. Yes; that is the idea.

8 Cr. Int. Does your road extend beyond this State, and to what point?

Ans. The line of the Nashville and Chattanooga road runs from Chattanooga, Tennessee, to Hickman, Kentucky, passing through a portion of the States of Georgia and Alabama between Chattanooga and Nashville.

9 Cr. Int. Does not your road connect with the L. & N. railroad at McKenzie and Nashville, and are not your trains run so as to make connection with the Louisville and Nashville trains at those points, as a general thing?

Ans. Yes; our trains connect with the Louisville and Nashville trains at McKenzie and Nashville.

10 Cr. Int. During 1887 and 1888 were there any through Pullman sleeping cars running from Louisville over your road to points in Florida and Georgia?

Ans. We had a line of sleepers running from Louisville to Jacksonville, Florida, during the year 1887.

11 Cr. Int. Have the Pullman Company any shops in Tennessee where they do all necessary repairing to their cars?

Ans. I know of no shops in Tennessee.

12 Cr. Int. Are there any on your line of road?

Ans. No, sir.

13 Cr. Int. The contract in evidence between your company and complainant requires complainant to furnish all sleeping cars needed for operations on your road. Does your company, under that
58 contract, require it to operate sleeping cars over that part of your road lying between Nashville and Memphis?

Ans. If the contract exists it is in the hands of the president and general manager, and I am not conversant with its requirements. I understand that the Pullman Company are to furnish sleepers for our night trains between Nashville and Memphis, which they do at our request.

Redirect examination:

Int. 1. I will ask you, Mr. Wrenne, if the sleeping cars operated by your company between Nashville and Memphis could not be discontinued without in any way interfering with the use of sleepers on the remainder of your line of road.

(Objected to as immaterial.)

Ans. There is no connection whatever between the sleepers used between Nashville and Memphis and other parts of the line.

Int. 2. I understand you to say that two sleeping cars were needed for the transaction of business between Memphis and Nashville during the years 1887 and 1888.

Ans. Yes, sir.

Recross-examined:

Recr. Int. 1. Does not the proper operation of your railroad call for the running of sleeping cars between Nashville and Memphis?

Answer. Yes, sir; on night trains.

Recr. Int. 2. Did not the cars passing from Memphis during all or nearly all of 1887 and 1888 run on to Louisville, Kentucky, before returning to Memphis?

Ans. I don't know if they went to Louisville; they were cars in the Pullman service and might have been in the line leading to Chicago, St. Louis, Cincinnati, New Orleans, or Atlanta.

M. J. C. WRENNE.

59 The cause came on to be heard at the April term, 1890, and the following final decree was rendered and entered of record:

This cause came on to be heard at this term upon the bill, answer, replication thereto, and proof, and was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged, and decreed that the temporary injunction heretofore issuing out of this court, restraining and enjoining the said defendant comptroller and his agents, attorneys, and clerks and servants from issuing any warrant for the collection or proceeding to enforce the collection of any taxes from complainant for the privilege of operating its sleeping cars in the State of Tennessee for the years 1887 and 1888, be made perpetual, and that defendant pay the costs of this cause, for which let execution issue.

Which foregoing decree was entered of record April 23d, 1890.

60 And thereupon and at the said April term of said court the following order was entered:

This cause came on again to be heard upon the former proceedings and the final decree herein, and the defendant prayed an appeal from the final decree rendered at this term of the court to the Supreme Court of the United States, which appeal the court was pleased to allow, and the penalty of the bond for appeal is fixed at one hundred and fifty dollars.

And thereupon the defendant perfected its appeal by executing and filing the following bond:

Know all men by these presents that Leon Trousdale, Jr., and Boone Canller are held and firmly bound unto the Pullman Palace Car Company in the full and just sum of one hundred and fifty dollars, to be paid to the said Pullman Palace Car Company, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, or assigns, jointly and severally. Sealed with our seals and dated this the 1st day of July, 1890. Whereas at a court lately by the circuit court of the United States for the middle district of Tennessee, in a suit depending in said court between Pullman's Palace Car Company and W. J. Allen, comptroller, a decree

was rendered against said J. W. Allen, comptroller, and the said J. W. Allen having obtained an appeal and filed a copy of the record in the clerk's office of the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Pullman's Palace Car Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next: Now, the condition of the above obligation is such that if the said J. W. Allen, comptroller, shall prosecute to effect said appeal and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; otherwise to be and remain of full force and effect.

LEON TROUSDALE, JR.
BOONE CANLLER.

61 I, H. M. Doak, clerk of the circuit court of the United States for the middle district of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of the record in the above-styled cause as the same is of record and on file in my office in the cause wherein Pullman's Palace Car Company is complainant and J. W. Allen, comptroller, defendant. In witness whereof I have hereunto subscribed my name and affixed the seal of the court this the first day of July, 1890. Done at my office, in Nashville, State of Tennessee.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK, *Clerk.*

The costs herein have *have* all been paid by the State of Tennessee.

H. M. DOAK, *Clerk.*

Endorsed on cover: M. Tennessee C. C. U. S. No. 1381. J. W. Allen, comptroller of the State of Tennessee, appellant, *vs.* Pullman's Palace Car Company. Filed October 11, 1890.